

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

Crl.MC.No. 3114 of 2007()

AGAINST THE ORDER DATED 30/08/2007 IN CRMP.10857/2007 IN
CC.553/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHALAKUDY
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PETITIONER: ACCUSED

VINU.C.D.S/O. DEVASSY
CHEMBIKADAN KANNAMPUZHA HOUSE,
PALISSERY.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.P.P.BIJU

RESPONDENTS: COMPLAINANT & STATE

1. STATE OF KERALA REP. BY
PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM.

2. BINURAJ,S/O.PARAMAN,
PULIKKAL HOUSE, PALISSERY DESOM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No.3114 of 2007

Dated this the 10th day of October, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. Cognizance was taken as early as in 2005. The case has now reached the stage of defence evidence. It is the grievance of the petitioner that the petitioner did not get an opportunity to cross examine the complainant, who has filed the chief affidavit. According to the petitioner, on account of reasons beyond his control, the complainant could not be cross examined earlier. But when an application was filed before the learned Magistrate for permission to cross examine the complainant, that prayer was rejected by the learned Magistrate by Annexure-I order. The petitioner claims to be aggrieved by Annexure-I order.

2. I have gone through the impugned order. The learned Magistrate has narrated in detail the events that had taken place. It is a classic case of the horse refusing to drink water and not a case of the horse not being taken to water. Be that as it may, I am satisfied that a further opportunity can be granted to the petitioner to cross examine the complainant on terms. The complainant is available in

India and is attending the court on all dates of posting, submits the learned counsel for the petitioner. I am, in these circumstances, satisfied that subject to appropriate terms, which shall adequately compensate the complainant, a further opportunity can be granted to the petitioner to cross examine the complainant.

3. Considering the nature of the relief which I propose to grant and in the interests of expeditious disposal of the 138 prosecution which has been pending for a long period of time, I am satisfied that this Crl.M.C can be disposed of without ordering notice to the respondent/complainant.

4. This Crl.M.C is, in these circumstances, allowed. There shall be a direction that the learned Magistrate shall permit the petitioner to cross examine the complainant at the defence stage on condition that the petitioner deposits an amount of Rs.2,500/- (Rupees Two thousand five hundred only) as cost before the learned Magistrate before the next date of posting or within 7 days if the next posting date falls earlier. The petitioner must get ready for cross examination of the complainant on the next date of posting.

(R.BASANT, JUDGE)

rtr/-

